

REMARKS

Upon entry of this amendment, claims 1-8 will be pending in the application. Claims 1-7 are amended to correct minor typographical errors and informalities. Claim 8 is new. Support for claim 8 can be found on page 35, line 25 through page 36, line 25.

The specification is amended to correct typographical errors in the structures of compounds 26, 27, and 28. The amendment removes the NH-NH bond in each of the structures. Support for this amendment can be found on page 12, lines 23-25 of the specification. No new matter is added.

Applicants' response to the Examiner's rejections is as follows.

I. Oath/Declaration

The Examiner states that the declaration fails to comply with 37 CFR 1.497(a)(2) since PCT/US03/40763, filed December 18, 2003, is not identified in the declaration. Applicants assert that a declaration in compliance 37 CFR 1.497 was filed with the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1. Applicants could not refer to PCT/US03/40763 in the declaration because the declaration was filed with the initial Request and therefore an international application number had not yet been assigned. Applicants respectfully assert that a new declaration does not need to be submitted and request that the rejection be reconsidered and withdrawn.

II. Claim Objections

The Examiner objects to claims 1 and 2 because of the following informalities:

- a) The Y and Z definitions appear twice in claim 1 (page 39, lines 8, 9, and 27; and page 40, line 1); and
- b) Claim 2 does not conform to M.P.E.P. 608.01(m), since each claim must end with a period.

Applicants have amended claim 1 by removing the Y and Z definitions on page 39, lines 8 and 9. Applicants have amended claim 2 by placing a period at the end of the claim.

III. Claim Rejections - 35 U.S.C. §112

The Examiner has rejected claims 1-7 under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for a compound of Formula (I) or a salt or solvate thereof, does not reasonably provide enablement for a “physiologically functional derivative thereof” as found in instant claims 1, 3, and 4. The Examiner states that the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The Examiner has also rejected claims 1-7 under 35 U.S.C. §112, second paragraph, stating that claims 1, 3, and 4 are indefinite because the expression “physiologically functional derivative thereof” is unclear as to its meaning and therefore, the metes and bounds of the claims cannot be ascertained.

Solely in order to expedite prosecution of this application, Applicants have amended claims 1, 3, and 4 by removing the expression “physiologically functional derivative thereof”. Applicants request that the rejection be reconsidered and withdrawn.

The Examiner also rejected claim 1 under 35 U.S.C. §112, second paragraph, because in claim 1, there are two different definitions of the X variable (page 39, lines 6-7 and 26). Applicants have amended claim 1 such that there is only one definition of X. In claim 1 the definition of variable X now reads “X represents $(CH_2)_n$, NR₂, O, NR₂CO, CONR₂ or a bond”. In light of this amendment, Applicants respectfully request that the rejection be reconsidered and withdrawn.

Conclusion

This reply is intended to further this case to allowance by addressing each ground of objection and rejection in the Examiner's Office Action. Reconsideration of this application is respectfully requested. Should the Examiner have any questions regarding this application, the Examiner is invited to call the undersigned agent at the number given below.

Respectfully submitted,

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